IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI SOUTHERN DIVISION

GARY BRICE MCBAY

PLAINTIFF

V.

CIVIL ACTION NO. 1:07CV1205-LG-RHW

HARRISON COUNTY, MISSISSIPPI BY AND THROUGH ITS BOARD OF SUPERVISORS; HARRISON COUNTY SHERIFF GEORGE PAYNE; WAYNE PAYNE; DIANE GATSON RILEY; STEVE CAMPBELL; RICK GATSON; RYAN TEEL; MORGAN THOMPSON; JOHN DOES 1-4; AMERICAN CORRECTIONAL ASSOCIATION; JAMES A GONDLES, JR.; UNKNOWN DEFENDANTS 1-3 EMPLOYEES OF AMERICAN CORRECTIONAL ASSOCIATION; HEALTH ASSURANCE LLC AND UNKNOWN DEFENDANTS 1-2 EMPLOYEES OF AMERICAN CORRECTIONAL ASSOCIATION

DEFENDANTS

STATE OF MISSISSIPPI

COUNTY OF HARRISON

AFFIDAVIT OF WARDEN DONALD CABANA HARRISON COUNTY SHERIFF'S OFFICE

PERSONALLY CAME AND APPEARED BEFORE ME the undersigned authority in and for the County and State aforesaid, the within named, DONALD CABANA, who, after first being duly sworn by me on his oath, did depose and state the following:

My name is DONALD CABANA, and I am over the age of twenty-one (21) years. I am the Director of Corrections for the Harrison County Adult Detention Center and have held this position since August 18, 2006. I have personal knowledge of the matters and facts contained in this Affidavit and



- I am competent to testify to the matters stated herein.
- 2. As Director of Corrections for the Harrison County Sheriff's Office, I have first hand knowledge of the maintenance and/or storage of records of the Harrison County Sheriff's Office for the Adult Detention Center and what those records reflect, including inmate medical records, inmate court records, and policies of the Harrison County Sheriff's Office.
- 3. I have attached hereto as **Exhibit "1"** relevant portions of Plaintiff's inmate records. They are a true and correct copy of Plaintiff's inmate records contained in the files of the Harrison County Adult Detention Center, which are maintained in the regular course of the law enforcement function of the Sheriff of Harrison County and the Harrison County Adult Detention Center, and were generated in the regular course and pursuant to the regular activities of and duties imposed by law upon the office of the Harrison County Sheriff and made at or near the time of the matters set forth or from information transmitted by, a person with knowledge of those matters.
- 4. I have attached hereto as **Exhibit "2"** relevant portions of Plaintiff's medical records contained in the files of the Harrison County Adult Detention Center, which are maintained in the regular course of the law enforcement function of the Sheriff of Harrison County and the Harrison County Adult Detention Center, and were generated in the regular course and pursuant to the regular activities of and duties imposed by law upon the office of the Harrison County Sheriff and made at or near the time of the matters set forth or from information transmitted by, a person with knowledge of those matters.

I certify the above declaration is true and correct under penalty of perjury.

Affiant/Donald Cabana

Harrison County, Mississippi

Sworn to and subscribed before me on this the

Expires:

__ day of November, 2009.

Notary Public

Case 1:07-cv-01205-LG-Rthron Cocumper BROFF DEFINED 1/1/3/09 Page 4 of 11 UNIFORM ARREST / BOOKING FORM

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		RY BRICE	<u>.</u>					N/			,			,	05-21728		
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Harrison County Sheriff's Department								N	1 S0240	0000							
DATE OF		ST		TIME								ARRES					
11-06-05				1953	HOI						ILLI	MAN R			RT, MS 39		<u> </u>
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0	1. Type Offense	2. Code		Type Offense	······································	4. C	ode	5. Offense	
F	PUBLIC DRUNK 6. Date Offense Reported			Time Offense R	eported			Earliest Date	Latest Date
F	8. Location of Offense (Street Address)		19	929 HOURS	<u> </u>	·		11-06-05 Time	5 11-06-05 Time
N S	18009 TILLMAN RD. GULFPORT.	MS 39503						1929	1953
Ε	9. Firm Name (If Commercial) CHOPPERS LOUNGE				I1. Patrol Area S. WEST	a 12. Shift MIDN	GHT		of Week Occured TWTFS
V	14. Victim's Name (Last, First, Middle)		15. R	tesidence Addres	SS				16. Res. Phone
Ċ	17. Victim DOB 18. Sex 19. Race	20. Employer/School			21. Busines	ss/School Address	***************************************		22. Bus. Phone
I M	23. U RP 24. Name (Last, First, Midd	SSN 427-43-5221		esidence Addres 6 46TH AV		PORT, MS 395	501		26. Res. Phone 228-547-4393
&	27. DOB 28. Sex 29. Race M	30. Employer/School CHOPPERS LO	UNGE			ss/School Address IAN RD. GULFPORT,	MS 39503		32. Bus. Phone J NKNOWN
W	33. □ V ■ RP 34. Name, (Last, First, Midd	e)	35. R	esidence Addres	and the same of th			.3	36. Res. Phone
T N	3 37. DOB 38. Sex 39. Race	40. Employer/School				s/School Address	<u></u>		ON FILE 12. Bus. Phone
E S		HARRÍSON CO.			P.O. BO	X 1480 GULF	PORT, N		228-865-7060 Alcohol Related
S		·	cquaintance		Relative				☐ Drug Related
	45. Status- 46 Oty 47 Article	48. Brand, Make or Manufacturer	49	9. Model Name and Number	50. Descri (Color		51. Serial N Owner A	lo. And/Or Applied No.	52. Value
		·							
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V E	VEHICLE 53. License No.	54. State 55. Y	/eh. Yr.	56. Make/Sty	le 57	7. Model	58. Color/C	Color	59. Value
H	□ E □ S □ R □ D □	·							
L	60. VIN Number	61. Vehi	cle Marks/ Da	amage/ Decals/C	comments				
Е	62. Narrative of Offense (Attach Additional Narrativ	e If Needed)							
NARRATIVE	ON 11-06-05 DEPUTY ALLEN RECOMPLAINT. UPON ARRIVAL I MALE, LATER IDENTIFIED AS RANDAZZO SAID THAT HE WA'HITTING OTHER VEHICLES. MR WAIT FOR THEM TO CALL HI ASSAULT HIM. MR. RANDAZZO ARRIVED. DEPUTY ALLEN OBSE MCBAY HAD A BLOODY NOSE. THEN PLACED MR. MCBAY INTWITH PUBLIC DRUNK.	SPONDED TO DEPUTY ALLEN GARY MCBAY ICHED AS MR. RANDAZZO T M A TAXI. MR THEN GRABBE RVED MR. RAN AMR RESPOND	SPOKE WAS I MCBAY OLD MR RAND MR. M MDAZZO ED AND	TO THOD DISTURBING WAS LE MCBAY AZZO STA MCBAY AN SITTING (MR. MCB NSPORTED	MAS RAING THE AVING A FHAT HE THE THE D HELD ON TOP CAY REFU	NDAZZO WIBUSINESS AND NOTICE DID NOT NAT MR. MCHIM DOWN DF MR. MCBUSED ANY T	HO STA AND ASI D HIM EED TO BAY TH UNTIL AY AND REATM	TED TH KED TO FALLING BE DRIV HEN ATT THE SHI O NOTICI ENT. DE	AT A WHITI LEAVE. MR G OVER AND VING AND TO EMPTED TO ERIFF'S DEPT ED THAT MR PUTY ALLEN
	63. Evidence Disposition (Location)			63A. Complai Signatu					
1	64. MOI (Reverse Side) 1. Type of Premise	CODE F	7. Weapon T	ype	CODE 65	OPEN		CLOSED	
	2. Object of Attack	-	8. Use of We	·	-	☐ 60 Suspended ☐ 63 Patrol Folio	w-Up	☐ 20 Clear	ed Adult Arrest ed Exceptional Adt.
M 0	Point of Entry Method of Entry	-	9. Method of	Departure or of Suspect	C F	☐ 66 Detective Follow-Up			ed Juvenile Custody ed Exceptional Juv.
	5. Method of Attack (Person		11. Evidence		-	■ Yes □ No □ Will Sign La	iter	 □ 50 Other □ 70 Unfou 	Cleared Exception nded
	6. Method of Attack (Proper	ty)	12. Place of	Offense	С	-			
	Poporting Officer		13. Solvabili		A June Superior	\r'		100 5	of Chatter
66. No.	Reporting Officer: 75 Name N. ALLEN	67. Division PAT	ROL	No. 44	ving Supervisc Name			69 Da	pe of Spatus
70. No.	Follow-Up Officer: Name	71. Date/Time A	ssigned	72. Attach		□ Narrative ■ Custody For	☐ Other m (Descrit	— 7 эе)	•
* \/	Victim DP_Reporting Party **Status E Evi	1				Di-1. 0+101D			0.4 0.0

Harrison County Adult Detention Center George Payne, Sheriff Use of Force Report

1)Date:	2)Time:		3)Location:					4)Incident Nur	nber
11.16.2005	2100	1/ S	Bookin			6)Date of B	:_+L.	7)Sex:	
5)Inmate's Name				•		o)Date of B	ITIN:	/)Sex:	
March	Grad							VlMale	□Female
8)Docket Number	r. CIAKI	9)Bl	ock:		10)Section:	L	11)Cel		
27887	3	الكرار ا	N).	(A	N/2	1.	11,001	NA	
12)Reason for use		i		L		C		70,7	<u></u>
Necessary to o	lefend anoth	er offi	cer		To restrai	n for inmate's	safety		
Necessary to o	lefend anoth	er inm	ate		Other:				
To prevent vio						•			
13) Was inmate in) Tran	sported? 15)Destination	•		16) 5	Screened by med	lical?
	~				NA			<u> </u>	_
yes _			⊠ No		, ,,				<u> </u>
17) # of inmates t	hat resisted:	18)	# of officers p	resent:	19)Supervisor notifi	ied / time:	20) Notifi	ed supervisor's s	ignature:
×	<u> </u>	<u></u>	- 8×		SGT MATHES	2115, HRS	Seft	10 1-	5/
21) At the time of		, the ir	imate was:		- C - L - L - Č / J		N/Combo	.11-, :	
Mostile Behav	ior [X Sus	pected under the	ne influence	of alcohol / drugs		Menu	ally impaired	
Other:		-							
22) Describe the i)	~			a comments or a	ryk – komposite	
- ACTA	1 - WELL	IN	5, NOSE	13(EEL)				- 	
23) Levels of resis	Intimidation	· Evnl	ain.						
(non-verbal cues i	ndicating inmat	e's attiti	ide or physical re	adiness)				" MANE	TEEBAL
(Hon-Yordan odes a			1 7	1	<u> </u>	1/-	100 A	4 THREATS	AGAINST
Verbal-Non C	ompliance: E	xplair	: INMATE	E VERBAL	CY KEFUSED	10 1910	SO OWN	/ COUNTY S	TATE
(verbal responses	or threats of nor	-compl	iance to officer's	directions)			16	,	
No prince Design	anacı Evalei	. /	land No	- Cano	CY REFUSED	Dun CLEAN	e Veres	1 Comprosidas	(
(dead weight or cl	inging to object	s in an a	attempt to prevent	the officer from	n gaining control)	USES CLEST	VERM	L CHARRIAN	
(ucad weight of the	meme to object		Proceedings of the control of the co		,				
Defensive Res	istance: Exp	lain:				FF \	···		
(pushing, pulling, o	or running away	from th	e officer to avoid	control; never	attempting to harm the o	fficer)		,	
Active Aggres	sion: Explair	ı: '/9	RAGISTA .	DEPATY	THAMPSONS .	S45-RT A	NO PUNC	ACD HIM	IN THE
(physical actions of	of assault)	HE							
			1 1			•		•	
Aggravated Ac		sion: E	xplain:			<u> </u>			
24) Levels of Con		resence	is Implied)						
24) Levels of Con	tioi. (Officer i	10301100	is implied)			1 1		10	A
Verbal Direction: Explain: MeBay Was Town To Complete Action's During Pass Out. (commands of direction) (Cosso Havo States To Head Avo Face									
(commands of dire	ection)				, /		- 1/	1 10 5	
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physical touch	ioint loc		ressure noints	Mhand stril	kes 🗌 leg strikes				
		72 LJF	ressure pomas	(X)nane sun	nos log sumos				
Body Part: HEAL) EFACE				Body Part:				
☐Intermediate W	eapons: (Che	mical et	c.):		- 				
	_			*					
Impact Weapon	ns: (primary or	alternat	ive) :			<u></u>			
Lethal Force: s	pecify: (Firea	rms or o	ther lethal force e	employed):	·				
25)Reporting Office	cer	ID	ivision	Reviewing	supervisor:	Dis	position Da		
No. 77/ Name	THOMPS	NB.	OUSING		Name: Mcf4-	.		of	f <u>/</u>
									

Harrison County Adult Detention Center George Payne, Sheriff Use of Force Report

Pressure Point Control Target Areas	Chemical	Spray Target Area
Infra orbital Nerve (P.P.)		
Jugular notch (P.P.)	Primary Larpei area	, Application area
Brachial Plexus (Origin) (H.E.H.) Brachial Plexus (Clavical Notch)		
Bracial Plexus Tie-in—(P.P.)	7	- h
Radial Nerve (H.E.H., L.W.)	<u> </u>	
	h -	
Median Nerve [H.E.H., 1.W.]		
1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		V —
Femoral Nerve (H.E.H., I.W.)		
Common Peroneal Nerve		
		of Chemical Spray
Tibial Nerve (H.E.H., I.W.)	26) Was Spray Effective?	Were Further Control Methods Needed?
	Yes No	Yes No
IVI KA	Number of Times Sprayed:	Approximate distance from subject:
	Eyes:	Skin:
1 6 1 . 3	closure tears No eff	
	Nose:	Chest:
	Discharge Irritation No ef O.C. Spray administrative warni	
	Spray administrative warm	Start Time:
	Yes No Time:	End Time:
P.PPressure point	Variables affecting levels of con	
HEHHard empty hand I.WImpact Weapon	 Officer / subject size and gene Environmental conditions and 	
1. W Impact Weapon	3. Reaction time	totality of offerinstatioes
This section to be co	ompleted by Medical staff or	nly!
27) Injuries Sustained by officer:		
Ayes No Explain: Officer was grabed by inmate ar	a bit carrow i line	or in the board
28) Injuries Sustained by Inmate:	a the several firm	ES IN THE THOU
Yyes No Explain: Small superficial abrasi	on to buck of head	swollen brusied O eye.
29) Location of Examination: Booking	30) Examined by:	1
Time of Examination: 2000 31) Medical treatment administered:	Staff Name: Staff Name:	Badge #:
Yes No		52)Signature of Fhysician.
Explain: BP 130/89 P84 R14. 7/m AAO?	(3 PERRLA	
33) Narrative:		1 1 1
I'm placed in shower to	arcs out I/m	grabed officer and
		Wall superficial cut
to back of head. Swollen and		, FERCH, AAOX3.
	present time,	na Im Stated "No
	> jaw was hurti	ng I/m Stated "No
" 3		110001
	security Inmate worker	
) Disposition:
No. Name:		Closed Open Under review
34) Inmate Classification: Juvenile Minimum security Medium Maximum 35) Reviewing Shift Lieutenant: Divis) Disposition: Closed

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Original Rep	ort		Type	IncidentIC	,e:		Date of Th			Date of O	riginal Report
Offense Sup	plement			DRMATIO			11/06/20			11/06/200	
☐ Custody Sur	plement			ect/Victim Na BAY,GARY		73		List Complaint	Numbers of C	Connected C	Cases
Status	Qty.	Artic		Brand/		Model Name	1	Description	Serial No	o. or OAN	Value
1900 - 0700 OUT PROCUNTOXICA DEPUTY WOULD MAISED CONTROL THOMPSO DEPUTY THOMPSO DEPUTY TO LET GO OF TO MCBA APPROXID WITH AL	HOURS CEEDUR TED B THOMP OT "G CLOSED HOLD ON APPH THE HI F HIS (T Y BLEI MATEL' WITH N	S SHIFT RE WITT UT STI SON AS ET NAI FISTS. AND I ROXIMA SON FE EAD AN THOMPS EDING I Y 2125 I THER I NO FURT	. AT AH NEVLL ALSKED 'SKED' DEPIMEBALTELY HE GONS) FROM HOUR NSTR	APPROXIMAT BLE TO MCBAY 'AND TO UTY THEN CE AREA SHIRT IF THE NOS AND FOUCTIONS	MATELY E MCBA FOLLOV TO RE OOK AT OMPSON GRABE GON TH PHYSIC OF MC DEPUTY OSE ANI OUND N G GIVEN	SON #224 WAS Y 2115 HOURS D AY, GARY H.C.A W VERBAL CO MOVE HIS (M N AGGRESSIVE I MOVED TOW BED DEPUTY T E SIDE OF THE CAL DANGER A CBAY.DEPUTY T THOMPSON R D FACIAL SWE TO SERIOUS IN N BY DEPUTY JITY THOMPSON	DEPUTY TO L.D.C. DOWNMANDS CBAY) COMPSON HEAD WIND RETURN THOMPSON LLING. MURIES TO THOMPSON	THOMPSON WOCKET #278873 SOUTHING, MOTE TOWARDS BAY TO EMILY NO BY THE SOUTH A CLOSE JUNNED MULT ON STOPPED JUD MEDICAL IN JUDICAL SOUTH A CLOSE JUDICAL SO	AS PERFORMATE OF ANY AND STATE OF A SOUTH AND DEPUTY PLOY A SOUTH AND DEPUTY ALL ACTICEVALUATIONS MCBAYOMPLETED	RMING TOMORES THOMPS OF TEMP STRUCK RING THE WS WITH ONS WHE ON VIA RULL THE DE	HE DRESS PPEARED ON. WHEN THAT HE ON WITH TY HAND DEPUTY ATTACK CLOSED N MCBAY ADIO DUE ICBAY AT COMPLIED RESS OUT
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DISPOSITION

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	NURSES NOTES
/	$1.01 L_{ m D}$
DATE	TIME
11/10/10	
11/10/05	2100 Called to booking I/m Epporto
	The small suggested but officers
	share denies any other injuries If
	"I am px" I wrice. T/m stal
	Voices of other als AHOX3, VERRLA, Ilm
	can move his time I'm
· · ·	side without difficulty and down, side to
	rall next available visit Thill place on Dr
	and unable to
	time. Will fill consents at ox
	TOTION UP PRIV. THOUND IN
ITIAL SIGNATU	
1	
- VAX VAVI	ATTAL SIGNATURE INITIAL SIGNATURE
No graduate participation and	- Olds
ME-LAST	FIRST
chay Gar	MIDDLE ALLERGIES
V	

NURSE NOTES

f	EXHIBIT	
	<u>"2"</u>	

QPADEVO Case 1.07 cv-01205-LG-RHW Document 300-11 Filed 11/13/09 Page 10 of 11 of 11:12

(en) Next Screen (24) Exit
Docket: CJ 278783 File # 92765 Name MCBAY, GARY BRICE

1) Obvious pain/bleeding/injury/illness requiring medical treatment? Y INMATE HAD A BLOODY NOSE WHEN HE CAME IN SEEN BY MEDICAL

2) Was taken to hospital prior to intake? N

3) Appear UI Alcohol Y Drugs N INMATE UI OF ALCOHOL

4) Visible signs of Alcohol/Drug withdrawal? N

5) Obvious signs of fever/jaundice/infection which might be contagious? N

6) Skin free of vermin? Y CLEAN

7) Difficulty understanding questions or spoken language? Y

INMATE MAKING STRANGE STATEMENTS